

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Declaratory Ruling that)	WC Docket No. 03-45
pulver.com's Free World Dialup)	
is neither Telecommunications nor a)	
Telecommunications Service)	

REPLY COMMENTS OF PULVER.COM

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April 2, 2003

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REPLY COMMENTS OF PULVER.COM

pulver.com hereby submits these reply comments in the above-referenced matter. The comments generally support pulver.com's contention that its Free World Dialup ("FWD") is an Internet application and not either "telecommunications" or a "telecommunications service," as these terms are defined in the Communications Act of 1934, as amended (the "Act").

pulver.com continues to urge the Commission to promptly grant its petition in order to provide the regulatory stability needed to foster innovation represented by FWD and similar Internet-based applications.¹

Background

As explained in the Petition, Free World Dialup offers FWD members the opportunity, at no cost, to locate and then subsequently create a communications session directly with each

¹ The recent extraordinary success of Yahoo Japan's voice over broadband service is confirmation of the potential for voice applications to drive the deployment of broadband and for broadband customers to use their high-speed connections for voice communications. *See, e.g.*, "Japan's Yahoo! BB Tops 2 Million ADSL Users, VoIP Reaches 1.8 Million," available at <http://www.convergedigest.com/DSL/lastmilearticle.asp?ID=6658> (last visited April 2, 2003).

other over Internet connections purchased independently by those members.² There are no FWD connection fees, hardware or software fees, monthly subscription fees, or per-call charges. As Qwest recognizes, FWD is akin to an on-line directory that provides members with Internet Protocol (“IP”) addresses and information regarding the availability of other members. *See* Comments of Qwest Communications International, Inc. (“Qwest”) at 4. FWD plays no transport role in any communications between or among FWD members.³

Discussion

Commenters that address the classification of Free World Dialup agree with pulver.com that FWD is not a “telecommunications service” as that term is defined in the Act. *See* Comments of Cisco Systems, Inc. (“Cisco”) at 2 (offering supporting legal analysis); Comments of Global Crossing North America, Inc. (“Global Crossing”) at 2; Comments of International Softswitch Consortium (“ISC”) at 3 (describing as “inescapable” the conclusions that FWD is not “telecommunications” and that pulver.com does not offer a “telecommunications service”); Qwest at 1 and 5-6; *see also* Comments of Verizon at 3 (observing that “a service should not be regulated as common carriage if it is not, in fact, being offered to the public on a common carrier basis”).

Fewer commenters discuss whether FWD is “telecommunications.” Of those that do, most agree with pulver.com that FWD is not “telecommunications.” *See* Cisco at 2; Global Crossing at 2; ISC at 3. Only Verizon asserts that FWD is telecommunications, and it fails to offer any factual or legal analysis supporting its claim. Verizon at 3. Qwest, on the other hand, correctly recognizes that “pulver neither offers telecommunications to either its subscriber or the

² While FWD is intended to facilitate voice communications, the actual content of the session may be voice, video, or text.

³ SBC mistakenly characterizes FWD as an end-to-end service. Opposition of SBC Communications Inc. (“SBC”) at 3.

public, nor does it provide or offer to provide the actual telecommunications capacity whereby its subscribers communicate with each other.” Qwest at 6 (emphasis in original).⁴

FWD, like IP telephony software, facilitates voice communications over the Internet. Both FWD and IP telephony software are applications that the subscriber runs, using Internet access provided by its Internet service provider. *See, Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 at ¶ 87 (1998). The Commission previously has concluded that “IP telephony software companies do not ‘provide telecommunications.’” *Id.* at fn. 186. Similarly, pulver.com does not provide telecommunications when it makes FWD available to its members. FWD does not constitute “telecommunications” in any sense because FWD does not transmit information of the user’s choosing, between or among points specified by the user without change in the form or content of the information as sent and received. *See* 47 U.S.C. § 153 (43).

Federal law creates a framework in which regulatory responsibilities, including those associated with the payment of universal service contributions and access charges, are limited to entities involved in the provision of telecommunications or telecommunications services. *See, e.g.,* 47 U.S.C. § 254(d) (imposing universal service contribution requirements on providers of interstate telecommunications); 47 C.F.R. § 54.706 (same); 47 C.F.R. § 69.5(b) (requiring payment of access charges by interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services). The classification of FWD as telecommunications or a telecommunications service thus necessarily determines the

⁴ Although Qwest acknowledges that FWD does not offer or provide telecommunications to its members, Qwest nonetheless opposes pulver.com’s request for a Commission ruling that FWD is not “telecommunications.” Qwest at 8-9. Qwest’s opposition to this aspect of the Petition is puzzling. Even assuming, *arguendo*, that pulver.com uses telecommunications to provide FWD, such use would be as a service input or component; it would not render FWD itself “telecommunications.”

regulatory responsibilities owed by pulver.com, which makes FWD available to the global community.

Several parties suggest that, whatever its classification, pulver.com should be subject to regulatory duties currently owed only by providers of telecommunications or telecommunications services, including the payment of universal service contributions and access charges. *See, e.g.*, Comments of United States Telecom Association (“USTA”) at 3-4; BellSouth Corporation at 4. To the extent these commenters urge the imposition of regulatory duties on an entity that is not providing a telecommunications service or telecommunications, they are recommending action that conflicts with the federal framework. The Petition asks only for an affirmation as to FWD’s place in the current regulatory scheme; it neither requests nor provides an appropriate vehicle to reexamine that framework. In the event that framework is changed, pulver.com will abide by those changes. Regardless of how FWD is categorized by the Commission, pulver.com, of course, will cooperate with law enforcement.

Several comments argue that the relief pulver.com seeks is premature. BellSouth at 1-4; Department of Justice/Federal Bureau of Investigation (“DoJ/FBI”) at 2; Global Crossing at 2; ISC at 2-3; SBC at 1; Verizon at 1-2. There is no benefit, however, to deferring action on the Petition until the conclusion of pending proceedings regarding wireline and cable broadband Internet access or the overhaul of the current intercarrier compensation regime.⁵ The issues raised in pulver.com’s Petition are unrelated to the matters under review in these other

⁵ *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities, Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, Notice of Proposed Rulemaking (rel. Feb. 15, 2002) (“*Wireline Broadband NPRM*”); *Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities; Internet over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet over Cable Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 02-77 (rel. March 15, 2002) (“*Cable Modem Inquiry*”); *In the Matter of Developing a Unified Intercarrier*

proceedings. The Commission's pending broadband proceedings are focused on issues pertaining to providers of Internet connectivity. These proceedings are not intended to address issues regarding Internet applications like FWD; indeed, no party identifies an application-specific issue under consideration in either pending broadband proceeding. Contrary to the concern expressed by the Department of Justice and the Federal Bureau of Investigation, there is no basis to suggest that Commission action on pulver.com's Petition will prejudice the issues under consideration therein. Comments of DoJ/FBI at 4.⁶ Further, re-opening and expanding these proceedings to address issues relating to Internet applications would raise issues regarding adequate public notice, would be administratively inefficient, and would cause additional delay in the conclusion of those rulemakings.

Similarly, there is no need to defer action on the Petition pending conclusion of the Commission's intercarrier compensation proceeding. According to the Commission, the purpose of the intercarrier compensation rulemaking is to "identify a unified approach to intercarrier compensation – one that would apply to interconnection arrangements between all types of carriers interconnecting with the local telephone network, and to all types of traffic passing over the local telephone network." *Inter-carrier Compensation NPRM* at ¶ 2. The Commission specifically noted that it did not expect to extend to Internet backbones the rules to be established in that proceeding. *Id.* Because FWD does not involve the carriage of traffic, is not provided by a "carrier," is not interconnected with the PSTN, and does not use local exchange facilities for

Compensation Regime, Notice of Proposed Rulemaking, FCC 01-132 (rel. April 27, 2001) ("*Inter-carrier Compensation NPRM*").

⁶ DoJ/FBI erroneously describes pulver.com as a "broadband Internet service provider." DoJ/FBI at 4. Its description indicates that DoJ/FBI's comments may have been based upon a misinterpretation of the nature of FWD or the capabilities that pulver.com offers to FWD members.

the carriage of traffic, the outcome of the inter-carrier compensation proceeding is clearly inapplicable to FWD.

The Commission has before it sufficient facts to grant the requested relief. There is no compelling reason to defer action until the initiation and conclusion of a mega-proceeding to evaluate all forms of voice over IP (“VoIP”), as some parties suggest. USTA at 2. Nor is there any compelling reason to defer action because there is some prospect that FWD may evolve in response to member demand or technological innovation. BellSouth at 4; SBC at 2. Such evolution should be both expected and encouraged.

FWD helps realize the promise of the Telecommunications Act of 1996 (the “1996 Act”) and the national policy goals articulated therein. It is an innovative offering that promotes technological development and the growth of the Internet, consumer choice, and universal service objectives, including affordable communications. Moreover, because FWD allows members to use all types of broadband platforms – wireline, cable, wireless or satellite – it encourages the intra-modal competition the 1996 Act envisioned.

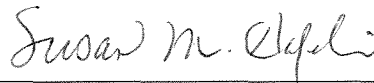
A prompt grant of the requested relief is consistent with the Commission’s interests in ensuring that “broadband services should exist in a minimal regulatory environment that promotes investment and innovation in a competitive market,” in seeking “to remove regulatory uncertainty that in itself may discourage investment and innovation,” and in limiting “unnecessary and unduly burdensome regulatory costs.” *Cable Modem Inquiry* at ¶ 5; *see also Wireline Broadband NPRM* at ¶ 3. Commission action will establish that FWD and similar innovative broadband applications are not regulated in the United States, thereby sending a strong signal to the international community that it should remain free from regulation worldwide.

Conclusion

Therefore, based on the foregoing, pulver.com respectfully requests that the Commission issue a declaratory ruling finding that its Free World Dialup ("FWD"), which facilitates point-to-point broadband Internet protocol voice communications, is neither a "telecommunications service" nor "telecommunications" as those terms are defined in Section 153(a) of the Telecommunications Act of 1996.

Respectfully submitted,

PULVER.COM

A handwritten signature in cursive script, reading "Susan M. Hafeli", positioned above a horizontal line.

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